

MARKED UP VERSION SHOWING CHANGES MADE:

IN THE CLAIMS

Please amend claims 17, 18, 19 and 29 as follows:

17. (Amended). Asexual reproduced progeny of the plant of claim 13.

18. (Amended). The asexual reproduced progeny of claim 17 wherein said asexual progeny is a cutting.

19. (Amended). An interspecific impatiens plant comprising a trailing habit, wherein said plant has a pedigree which includes plant [selected from the group consisting of] 2245B[, 2257B] and asexual reproduced progeny thereof.

29. (Amended). Asexual reproduced progeny produced from the trailing interspecific impatiens plant produced by the process of claim 25.

REMARKS

Reconsideration of the above-identified application in view of the foregoing amendments and following arguments is respectfully requested.

Claims 17, 18, 19 and 29 have been amended. No new matter has been added as a result of this amendment.

Drawings

In the previous Office Action, the Examiner stated that color photographs and color drawings were acceptable only for examination purposes unless a petition was filed under 37 C.F.R. Section 1.84(a)(2) or (b)(2) was granted permitting their use as formal drawings. Applicant herewith encloses such a declaration.

Double Patenting

In the previous Office Action, the Examiner has indicated that claims 2-4 and 6 were provisionally rejected under the judicially created doctrine of obviousness-double patenting as being unpatentable over claim 1 of co-pending application numbers 09/473,000 and 09/473,008.

Co-pending application number 09/473,000 has been abandoned. With respect to co-pending application 09/473,008, Applicant submitted a terminal disclaimer in this application in view of the present application to overcome a provisional double patenting rejection in that application. A copy of this terminal disclaimer is enclosed. Thereupon, in view of the submission of the terminal disclaimer in 09/473,008, Applicant submits that a terminal disclaimer is not required in the present application.

Claim Rejections – 35 U.S.C. Section 112

Claims 19-24 were rejected under 35 U.S.C. Section 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant herewith traverses this rejection.

Applicant has amended claim 19 to remove the reference to the plant identified as '2257B'. As amended, this claim now refers to plant '2245B' and asexual reproduced progeny thereof. Plant '2245B' is the subject of U.S. Serial No. 09/473,008 entitled, "Trailing Interspecific Impatiens Plant Named 'Balfafusia'". As discussed in U.S. Serial No. 09/473,008, the above trailing impatiens plant known as "Balfafusia" was initially designated '2245B' (see page 1 of the specification). Enclosed herewith in attached Exhibit A is a copy of the Ball FloraPlant 2001-2002 catalog which demonstrates that plants of 'Balfafusia' are now commercially available from Ball FloraPlant, a division of Ball Horticultural Company, the assignee of the present invention. Thereupon, because plant '2245B' is readily available to the public, Applicant submits that this rejection be withdrawn.

Claims 17, 18 and 29 are rejected under 35 U.S.C. Section 112, second paragraph as being indefinite. Specifically, the Examiner stated that claims 17, 18 and 29 were indefinite in the recitation of "asexual progeny". The Examiner suggested that these claims be amended to recite "asexual reproduced progeny". Applicant thanks the Examiner for her helpful suggestion. Applicant has amended the claims as suggested by the Examiner. Thereupon, in view of the amendment to claims 17, 18 and 29, Applicant submits that this rejection should be withdrawn.

Applicant thanks the Examiner for her acknowledgement that claims 13-16, 25-28 and 30 are allowed.

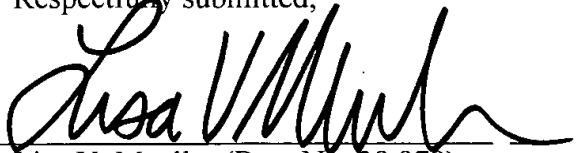
In view of the aforementioned amendments and arguments, Applicant submits that claims 17-30 are now in condition for allowance.

If any additional fees are incurred as a result of the filing of this paper, authorization is given to charge deposit account number 07-0181.

*(Chg Ext fee
- 010181)*

Respectfully submitted,

By:



Lisa V. Mueller (Reg. No. 38,978)

Attorney for Applicant

GARDNER, CARTON & DOUGLAS
321 N. Clark Street
Suite 3300
Chicago, IL 60610
Ph:(312)644-3000
Fx:(312)644-3381

CH02/22167307.4